



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO. 268 OF 2013**

**DANIEL WAWERU WANYOIKE.....APPELLANT/APPLICANT**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

On 8<sup>th</sup> August, 2012, the applicant was convicted and sentenced to serve ten years in prison for the offence of indecent assault with a child. Being dissatisfied with the conviction and sentence, the appellant appealed to this court seeking to have the conviction quashed and the sentence set aside.

Pending the hearing and determination of his appeal, the appellant filed a Notice of Motion dated 18<sup>th</sup> April, 2013 seeking to be admitted to bail on ground that, being a young businessman, he will suffer irreparable loss and damage if he will remain in prison before his appeal is determined. The appellant has also argued that he is able to raise security for his bond if admitted on bail though he has admitted that he was unable meet the bail terms that were imposed by the trial court during his trial. He says that he is not a flight risk and will attend court sessions whenever required. Finally, the appellant says that his appeal has overwhelming chances of success. These grounds were on the face of the motion and also constitute the applicant's depositions in his affidavit sworn on 18<sup>th</sup> April, 2013.

When the application came up for hearing on 3<sup>rd</sup> December, 2013, counsel for the appellant reiterated that the appellant's appeal has high chances of success and it will be rendered nugatory if he is not released on bail.

Mr Njeru for the state opposed the application for bail arguing that although the appellant had almost an automatic right to be admitted to bail during his trial, he no longer enjoyed that right after he had been convicted. Bail at an appellate stage, so the counsel argued, is discretionary. Over and above that the state counsel argued that it has not been demonstrated either there are exceptional circumstances warranting the appellant to be released on bail or that the appeal has high chances of success.

I have considered submissions by both counsel for the state and the appellant's counsel. I am persuaded by the state counsel's submissions that in an application such as this, the appellant is under obligation to demonstrate that he has an appeal that has overwhelming chances of success and therefore ought to be released on bail pending the determination of the appeal.

In the Court of Appeal decision of Dominic Karanja versus Republic (1986) KLR at page 612, it was held that where an appeal has overwhelming chances of success, there was no justification for depriving the applicant of his liberty.

Again in the Court of Appeal decision of Jivraj Shah versus Republic (1986) KLR 605, the court was also of the view that if it appears prima facie from the totality of the circumstances that the appeal is likely to be successful on account of some substantial point of law to be urged and that the sentence or substantial part of it will have been served by the time the appeal is heard, then bail should be granted.

Looking at the application before me and considering submissions by counsel for that appellant, I am not able to find any basis upon which it can be concluded that the appeal has overwhelming chances of success. Going by the court of appeal decision in Jivraj Shah versus Republic (supra) there is no substantial point of law that has been shown to exist and whose ultimate decision can be said, in all likelihood, will favour the appellant. My conclusion is that there is no justification in releasing the accused pending the hearing and determination of his appeal. The motion dated 18<sup>th</sup> April, 2013 is dismissed.

Dated, signed and delivered in open court this 20<sup>th</sup> January, 2014

Ngaah Jairus

JUDGE